THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

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Association Activities

THE STATED MEETING on March 12 will mark the retirement of Sidney B. Hill as Librarian and General Manager of the Association. The President elsewhere in this issue of THE RECORD has expressed the sentiments of the membership on Mr. Hill's well merited release from the strenuous burdens he has carried for so many years. After the business session of the Stated Meeting there will be appropriate recognition of Mr. Hill's services to the Association, and following the meeting a reception for Mr. and Mrs. Hill.

ON MARCH 11 The Honorable Charles S. Desmond of the Court of Appeals of the State of New York will deliver the third of the series of lectures sponsored by the Committee on Post-Admission Legal Education, Ernest A. Gross, Chairman. The fourth lecture will be by Professor C. J. Hamson of Trinity College, Cambridge, on April 2.

NORMAN S. MARSH, Secretary General of the International Commission of Jurists, spoke on "The Rule of Law and the Challenge of Recent Events in Hungary and Poland" at a meeting spon-

sored by the Association's special committee to cooperate with the Commission, of which Benjamin R. Shute is the Chairman.

THE NEWLY established Committee on Trademarks and Unfair Competition, Harold R. Medina, Jr., Chairman, held its first meeting in January. Following a general discussion of the jurisdiction of the Committee, subcommittees to study the following areas were established: definition of unfair competition, neighboring rights, relationship of Patent Office and courts, and state trademark problems.

THE COMMITTEE on Federal Legislation, Arthur L. Newman, Chairman, is preparing reports on the bills increasing the number of federal judges in the Southern and Eastern Districts of New York and on legislation dealing with the problem of Presidential succession when the incumbent is unable to perform the duties of his office.

DURING the past two months the following Section meetings were held: a joint meeting of the Section on Wills, Trusts and Estates, Albert Mannheimer, Chairman, and the Section on Corporate Law Departments, Thomas E. Monaghan, Chairman, at which Denis B. Maduro spoke on "How to Plan the Estate of the Corporate Executive."

In cooperation with the American Arbitration Association, the Section on Labor Law, Howard Lichtenstein, Chairman, held a practice arbitration on "Disciplinary Layoff of Shop Steward Accused of Leading Work Stoppage."

"Antitrust Limitations on the Exploitation of Patents" was the subject of a symposium sponsored by the Section on Trade Regulation, John E. F. Wood, Chairman. Speakers were Marcus A. Hollabaugh, Chief Counsel to the Senate Sub-Committee on Patents, Trade-Marks and Copyrights, and formerly Chief of the

Patent and Cartel Section of the Antitrust Division, and Harry R. Pugh, Jr.

M. Simon, former Justice of the Conseil d'Etat, and presently a member of the Cour d'Appel at Riom, was the guest of the Section on Jurisprudence and Comparative Law, Judge Samuel C. Coleman, Chairman. Judge Simon's topic was "The Sources of Law in the Administrative Courts of France and in its Civil Courts: A Comparison."

Robert S. Lesher, Counsel to the Joint Legislative Committee to Study Revision of the Corporation Laws, spoke at a meeting of the Section on Banking, Corporation and Business Law, Charles H. Willard, Chairman, on "Revising Our Corporation Laws."

Justice Bernard Botein's topic at a meeting of the Section on Litigation, Edward C. McLean, Chairman, was "Who Are The Accident Victims—The Parties, The Public, or The Courts?"

The Section on Taxation, Milton Young, Chairman, is sponsoring a series of three meetings. Speakers and topics are: "Tax Problems on Formation of the Closed Corporation," including capitalization, stockholder loans, transfer of property, stockholder agreements, tax-free exchanges, selection of accounting method and taxable year, by Carberry O'Shea and Richard Paul; "Tax Problems of the Operating Corporation," including the use of multiple corporations, compensating executives, safeguarding against personal holding company tax and accumulated earnings tax, distributions to shareholders, by Jacquin D. Bierman and Theodore Tannenwald, Jr.; and "Tax Problems on Liquidation of the Corporation," including tax-free liquidations, collapsible corporations, partial liquidations, by Robert Anthoine and Robert J. McDonald.

THE ASSOCIATION was represented at hearings in Albany on the proposals of The Temporary Commission on the Courts by the President of the Association, William C. Chanler, Acting Chairman of the Special Committee on the Administration of Justice,

and Jacob L. Isaacs, Chairman of the Committee on the Domestic Relations Court.

THE ANNUAL Photographic Show, sponsored by the Committee on Art, Alexander Lindey, Chairman, will open on March 14 at 4:30 P.M. The Subcommittee in charge of the show this year is Joseph G. Blum, Chairman, David Asch, Allan A. Masur and Charles H. Meyer.

THE JOINT Conference on Legal Education will hold a meeting at the House of the Association on March 9. Representatives of the Association on the Joint Conference are Sherman Baldwin, Chairman of the Committee on Legal Education, Whitney North Seymour and Paul B. Barringer, Jr.

The Calendar of the Association for March and April

(As of February 27, 1957)

March 4 Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Professional Ethics

March 5 Meeting of Committee on State Legislation
Dinner Meeting of Committee on Trade-Marks and Unfair Competition

March 6 Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates

March 7 Dinner Meeting of Committee on Corporate Law
Dinner Meeting of Committee on Criminal Courts, Law and Procedure
Meeting of Section on Taxation

March 11 *Lecture by Hon. Charles S. Desmond of the Court of Appeals, 8:00 P.M. Buffet Supper, 6:15 P.M.*

March 12 *Stated Meeting of the Association, 8:00 P.M. Buffet Supper, 6:15 P.M.*
Meeting of Committee on Domestic Relations Court
Meeting of Committee on Improvement of Family Law
Meeting of Committee on State Legislation

March 13 Dinner Meeting of Committee on Bill of Rights
Meeting of Section on Corporate Law Departments
Joint Dinner Meeting of Committee on Foreign Law and Committee on International Law

March 14 *Opening of Photographic Show, 4:30 P.M.*
Joint Meeting of Section on Administrative Law and Procedure and Section on Labor Law

March 18 Meeting of Library Committee
Dinner Meeting of Committee on Medical Jurisprudence

March 19 Meeting of Committee on State Legislation

March 20 Meeting of Committee on Admissions
Dinner Meeting of Committee on Courts of Superior Jurisdiction

March 21 Meeting of Committee on Arbitration
Dinner Meeting of Committee on Criminal Courts, Law and Procedure

March 25 Dinner Meeting of Committee on Copyright
Dinner Meeting of Committee on Military Justice
Meeting of Section on Taxation

March 26 Meeting of House Committee
Meeting of Committee on State Legislation

March 27 Dinner Meeting of Committee on Legal Aid
Dinner Meeting of Committee on Real Property Law
Meeting of Section on Wills, Trusts and Estates

March 28 Dinner Meeting of Committee on Criminal Courts, Law and Procedure
Luncheon and Meeting of Committee on Public Defender

March 29 Meeting and Luncheon of Committee on Public Defender

March 30 Meeting and Luncheon of Committee on Public Defender

April 1 Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Professional Ethics

April 2 *Lecture by Professor C. J. Hamson of Trinity College, Cambridge, England, 8:00 P.M. Buffet Supper, 6:15 P.M.*
Meeting of Committee on Insurance Law
Meeting of Committee on State Legislation

April 3 Dinner Meeting of Executive Committee
Meeting of Section on Litigation

April 4 Meeting of Section on Banking, Corporate and Business Law
Meeting of Committee on Criminal Courts, Law and Procedure
Dinner Meeting of Committee on Domestic Relations Court

April 4 *(contd.)*
Dinner Meeting of Committee on International Law
Dinner Meeting of Committee on Trade-Marks and Unfair Competition

April 10 Meeting of Committee on Foreign Law

April 11 Meeting of Committee on Criminal Courts, Law and Procedure

April 12 *Twelfth Annual Association Night*

April 15 Meeting of Library Committee

April 17 Meeting of Committee on Admissions
Dinner Meeting of Committee on Bill of Rights

April 18 Meeting of Committee on Arbitration
Meeting of Section on Corporate Law Departments

April 24 Dinner Meeting of Committee on Legal Aid
Dinner Meeting of Committee on Courts of Superior Jurisdiction
Dinner Meeting of Committee on Trade Regulation
Meeting of Section on Trade Regulation

April 29 Dinner Meeting of Committee on Medical Jurisprudence

April 30 Meeting of Section on Jurisprudence and Comparative Law

The President's Letter

To the members of the Association:

By the time that this issue of THE RECORD appears the membership will have learned that Sidney Hill retired on March 1 as General Manager and Librarian after many years of devoted service. He carries with him, I feel confident, the affectionate regard and appreciation of all members who have come in contact with his courteous, considerate and painstaking helpfulness. The Officers and Executive Committee have concluded what I believe to be generous, and what I know to be mutually acceptable, financial arrangements for his security and that of Mrs. Hill for their respective lives. I cannot, however, allow him to fade from the Association scene without recording a deep sense of gratitude and appreciation for his loyal and even-tempered dedication to the interests of the Association, its library and the welfare of the bar and its great traditions. I am sure that I voice the sentiments of every one in wishing him many years of health, peace of mind and happiness so that he may fully enjoy the leisure which he has so well earned.

Mr. Charpentier is going to carry on temporarily as Acting General Manager and Acting Librarian. The Executive Committee and Officers with expert assistance have been giving intensive study to the operation and administration of the Association's affairs, with the confident expectation that they can be improved and modernized so as more effectively to cope with the greatly expanded activities and membership. I shall expect to report further on the subject from time to time.

LOUIS M. LOEB

February 15, 1957

Justice is a Method

By The Honorable Dean Acheson

I had thought perhaps tonight we would speak about a situation which fills me with bewilderment. Every once in a while it apparently is discovered by scholars—we may give them that name temporarily—that human institutions, devised by human beings and operated by human beings, disclose the human touch. This discovery is a very surprising one apparently to those who make it.

It is particularly surprising when the objects of the discovery are judges and courts, and it becomes most surprising, devastatingly so, when the subject or the object of that discovery is our highest Court, the Supreme Court of the United States. At that point, people rush to put their pens to paper, and they produce results which not only show that the Supreme Court, as one might imagine, is an institution conducted over a great many years by human beings, but by very depraved human beings.

Recently, those of you who follow, as you should and I hope do follow, the book reviews in the Bar Association Journal, have read Senator Pepper's review of a book which is of this character. In his inimitable way Senator Pepper has described the type of mind which produces the sort of thing that I am talking about. The writer of the book, as I said, discovers not merely that the judges of the Supreme Court are human beings, but that they are addicted to carrying out the interests of their former clients, the interests of all of those parts of society with which they have identified themselves, and in a particularly ruthless and disagreeable way.

This is supposed, I imagine, to shock us, to make us believe that the whole institution of the law and the judiciary is something which needs to be looked at all over again. It certainly led

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Editor's Note: The address published here was delivered by Mr. Acheson before the annual dinner of The American Law Institute held in Washington, D. C. on May 25, 1956.

me some time ago to review my experience with the Supreme Court of the United States, an experience which began thirty-seven years ago when I was employed by it and insinuated myself into the confidence of these reprehensible gentlemen, and got perhaps a more intimate view of their attitudes of mind than the writers of many of these books.

As I thought over those years I came to one conclusion, and that is, that whatever I thought about them, it was different from what the writers of these books thought. I was not sure what my conclusions really were, except that they were different. And then I thought that perhaps this evening we might share some of my recollections of those years almost forty years ago, in which I was privileged to know members of our Highest Court who are now dead, and therefore I cannot be accused of currying favor if I say anything favorable of them.

In the first place, may I say that the environment of the Court was extraordinarily different from what it is today. Instead of that massive building which seems to shrink the members of the Court, if I may put it in that way, so that they disappear into the background of the building, the old Supreme Court Room brought out the judges into a position of dominance. It brought them out not only into a position of dominance, but into a friendly position. They belonged to an active world, a world of government which was going on around us. They were not, as Justice Stone used to say, "nine black beetles in the Temple of Karnak."

It was a busy place, with the Senate on one side, the House on the other, people walking up and down, and at twelve o'clock a couple of policemen came along and said, "Stand back! Stand back!" And everybody stood on either side of the corridor, and across the corridor would come the Justices from their robing room to the Court—all very folksy and very friendly, and part of life.

Into that environment I came as an employee of this Court. Now I am sure there are no great men like the great men of our youth. I know this, I think, because from my earliest days, when-

ever I tried to envisage God, I always saw my grandfather. And now whenever I look at policemen, I see boys, so I know there is something about youth that makes youth think in terms of grandeur.

But I don't think that is the complete explanation for the fact that the Court which I knew thirty-seven years ago seemed to me to be a very great Court. Here in this charming old Court Room, in the center of the Bench there were two men who seemed taken right out of the history of the United States, two soldiers of our Civil War, a Confederate Colonel and a Union Major. They did not have a professional aura about them. Judges they were, and great judges. But not only that; they were great people, and they seemed to me to come right out of American history.

Mr. Chief Justice White was the most charming gentleman you can imagine, a rather large man, with a small face in the center of a great head. His face seemed to be surrounded by flesh, but very small. He had a little shrewd nose, and eyes which peeped out of a large surrounding head of hair, and flesh and jowls which hung down and which shook under emotion.

He came to call on my Justice, Justice Brandeis, very often, two or three times a week, and would be left at Stoneleigh Court by his chauffeur. My task was to escort him home, which was a walk of two blocks up to New Hampshire Avenue and the house next to St. Matthew's Cathedral.

The Chief Justice was almost blind, and it would have been a disaster to let him loose in traffic. I was sent along to see that he got home without accident.

What I always tried to do was to provoke him into some sort of explosion, and that was not hard to do. I remember one day when I was taking him home. It was not long after an argument in the Supreme Court in which Mr. Elihu Root was expounding the doctrine that the Prohibition Amendment was unconstitutional; it was unconstitutional because it so changed the relations between the Federal Government and the States that it was, in a happy word, "unthinkable"—whatever that means. And being "unthinkable" it could not be constitutional.

The Chief Justice had asked from the bench, "What about the 13th Amendment? That rather changed the relations of the States."

"Well," Mr. Root said, "that wasn't really a rational thing. That was brought about by war."

This rather shocked the Chief Justice, who knew something about that war, and he began going into the thing rather violently.

Well, the next day as I was taking him home I remarked about this, and said how extraordinary it was that a former Confederate Colonel took the attitude he did, and that a former Secretary of War of the United States who had presided over the greatest overseas expansion of our power and military force that had occurred in our history, should take the view that he did.

We stopped in front of this hotel, which was not there at the time. In the place of this hotel was a lovely convent. We stopped in front of the walls. The old Chief Justice, shaking his jowls with emotion, said, "Young man, I know what you're thinking."

This terrified me, because I knew what I was thinking, too.

He said, "But I want you to know that at least once in his life, every man has a right to make a damn fool of himself."

Well, I never took that liberty with the Chief Justice again.

On his left sat Mr. Justice Holmes. So much has been said about Mr. Justice Holmes that it is impertinent for me to add anything except the impressions that one young man got from that very great man. And those impressions have to do with two things: One was the extraordinary beauty of his person, extraordinary beauty, I hasten to add, of a male creature. (I didn't want to get into any trouble, domestic or otherwise!) He was a lovely and a beautiful thing to look at. There was also about Mr. Justice Holmes a sense of grandeur which I have experienced in only one other person, and that is General George Marshall. When those two men—separately, of course—entered a room, you had a feeling that a presence came in; when they left, you had a feeling that a light was turned out.

The other thing about Mr. Justice Holmes which a young man

felt was a tremendous community of interest with the young because of his vast sense of the joy and eagerness and beauty of life.

I remember very soon after I came to Washington taking a message from Justice Brandeis to Mr. Justice Holmes. As I was leaving, he took me by the arm, looked at me as though he was seeing me for the first time and said, "How young you are!"

Well, I didn't feel young. I was twenty-six, I was married, I had a daughter, I was a member of the Bar. But suddenly I felt young, because he said so.

And he said, "Isn't life a wonderful thing!" Well, I hadn't thought about that. Life was just sort of like the air you breathe. He said, "You know, if that ceiling opened now and Le Bonne Dieu came down through it and He said to me, 'Wendell, you have five minutes to live,' I would say, 'I wish it were ten!' "

Not long after that he spoke again of this thing in a different connotation. This was the shortness of the experience of life of the race, not the individual, and he was remarking that our ages were sixty years apart, and that he had known a man sixty years older than he was who had known General Washington. And that if we went back this way through history we could get into the room in which the Justice and I were sitting, people who would bring us back beyond recorded human history. And he talked about the costumes of these people.

You could see in a moment the colorful grouping in this room which took us from me through the Justice, back through the Cavaliers and all the costumes you can think of, to a man dressed in skins and carrying a club in his hand.

He said, "Do you know what they would be talking about?"

"Well," I said, "Mr. Justice, I don't believe they would be talking, because they would have language troubles."

This irritated him because it blocked what he wanted to say, and he said, "They'd manage in some way."

And I said, "What would they be talking about?"

He said, "The one subject they had in common, women!"

Justice Holmes wasn't the Senior Associate Justice. That was Mr. Justice McKenna, of California. He and Judge Day I will

have to talk about together because they were so fragile, so frail, they looked as though a breath of wind would blow them away. They were so withdrawn from a young person like myself, that I have no idea what they were like. All I know about Mr. Justice McKenna was that he always wore rubbers, a white scarf and an overcoat at all times of the year, it made no difference at all. Justice Day was even frailer than he was, with a small body and a large head with the skin stretched tightly over it, and rather large ears. But to me he was the most glamorous and mysterious of all Members of the Court. He had had experiences that no one else on the Court had had. They might have been soldiers, they might have been Judges, they might have had many experiences. But he was deep in the mystery of life. And why? Because he had been Secretary of State.

It took years for me to discover that this was an illusion, that there were no mysteries. But as long as he lived I looked upon him with reverence.

Mr. Justice Pitney was a tall handsome man of the world, a magnificent looking person, a real Judge. Mr. Pepper knows far better than I do that he was a lawyers' judge. He was a judge whose mind counsel could reach. I will not say more. He had been Chancellor of New Jersey.

I remember one episode which perhaps does not bear out what I have just said. In those days when I was a clerk in the Court thirty-seven years ago, we had a thing called the Docket Book. The Docket Book is perhaps a symbol of the security which surrounded the Court in those days. It was a leatherbound book in the pages of which there was a page for each case before the Court. Proper docket entries were made, and down at the bottom was a place for the voting which the Judges kept in the confidence of the Court. And there were the names of the Judges. Then there was "affirmed," and "dismissed," and then a column called "Remarks."

But the important thing about this Docket Book was that under the leather covers were backs of steel, and there was a padlock in between so that no curious reporter could ever find out what the Court was doing.

I had a key to our Docket Book, and so did Justice Brandeis.

There was one case called Duplex Printing Company v. Deering, in the October term, 1919, which had to do with peaceful picketing. The case unhappily was decided adversely to the interests of justice, and we, the Justice and I, decided to dissent. So taking the key I unlocked the Docket Book to see whether we would be alone or whether we would have friends. And under "Remarks" Justice Brandeis had entered opposite Justice Pitney's name, "P. says, no such thing as peaceful picketing."

And I looked down and under "White, C. J.," it said, "C. J. saw peaceful picketing at Raleigh Hotel yesterday."

Justice VanDevanter was, I think, the most beloved Member of the Court among his colleagues. He was gentle and wise and kind and thoughtful. His colleagues regarded him, so far as Justice Brandeis and Justice Holmes who talked with me were concerned, with the greatest respect in conference. He was the one who made wise and helpful observations. He was the one who in the returns which came from the circulation of draft opinions, made the suggestions or corrections which both Judge Holmes and Judge Brandeis always accepted.

But as of the time that I knew him, he found great difficulty in writing himself. He was not a productive writer of opinions. I remember one day being sent to his house. In these far-off days there was no Supreme Court Building, and the Justices had offices wherever they could have them; not in the Capitol, not on the Hill. They had offices either in their houses or in their apartments.

I was sent with a message to Judge VanDevanter, and there he was in his study. As I came to the door I stopped. The room was filled with little piles of books, two books, three books, six books, eight books, all over the floor, each pile with a piece of paper with something written on the top of it.

He said, "Be careful. That is my opinion. Be careful!"

So I very carefully threaded my way around these books and finally sat down beside him. He said, "Do you see that pile over there with three or four little piles around it?" And I said, "Yes." He said, "If you had upset that, it would take me a month to

get it together again." And this was the way the Justice was constructing his opinion.

Some years later when I was a practitioner and had reached that point where I was sent out to get continuances, which is a great advance for a young man, I went to Judge VanDevanter to get a continuance on a matter which came up in his circuit. I explained it to him.

He took his pen and said, "Give me the paper."

I said, "Mr. Justice, you surely want to look at the papers."

He said, "No, you have explained it to me. That is enough."

Then I felt for the first time the really great responsibility that comes to a member of the Bar who is an officer of the Court; this confidence that that sweet Justice had in me was something that could not be betrayed. He was a lovely, lovely person.

Judge McReynolds is the ogre of the Liberals. All good Liberals say what a terrible person he was. Nothing could be more wrong. He was part ogre, but he was a most delightful and courteous person, with a good many other qualities added too. All of the Justice's thoughts were matters of passionate prejudice. They weren't merely economic prejudices; everything was a prejudice. He disliked women lawyers intensely. He hated tobacco smoke. He disliked Justice Brandeis. Whatever occurred to him was a strongly held prejudice.

The first time I was sent to his office with a message he explained to me that there were grave difficulties which existed between my boss and himself but he said, "That has nothing to do with you."

He explained to me in somewhat different words, that guilt by association was not one of his principles. He made it clear that my standing with him depended upon my own conduct. And it worked out all right over the years.

I belonged happily to a group which was early invited to meet with him. Woe be it to any unhappy young man who ever lit a cigarette in that group, because the Justice blew through the roof if that happened. That was explained in advance, and only a fool did.

Through the years we became very close friends. He dined annually with my wife and myself up to the time shortly before he died, and we dined with him. I remember one evening when he was dining with us. His gallantry and his warmth of nature occasionally betrayed him. Of course, one always had to have a single lady to balance the Justice who was a bachelor, and on this particular evening we had a most delightful lady who was the aunt of a reigning Justice of the Supreme Court at the present time.

She was an elderly lady, not too disparate in age from Justice McReynolds. When the time came for him to go home he went up to her in his most gallant manner and said, "Miss Laura, may I escort you home?"

She rose and said that certainly he could, and then in the rather fluttery sort of way of a spinster lady, said to my wife, "Do you think I am safe with such a handsome gentleman?" To which the Justice, with another gallant bow, said, "Miss Laura, you would be safe anywhere!"

And then he went out, rather conscious of the fact that it hadn't turned out just the way he meant it to turn out. But nobody could have been more kindly than he was.

The two most junior Members of that Court were Mr. Justice Clarke and my own boss, Justice Brandeis. Justice Clarke, the most junior Member, was a delightful man, a handsome bachelor, a deeply unhappy person. He disliked the Supreme Court of the United States. He wished he had never been on it. He had the misfortune to offend Justice McReynolds as my boss had had, but whereas Justice Brandeis was untouched by the fact that Justice McReynolds never spoke to him, this upset Justice Clarke very deeply.

Judge Holmes tried for years to patch this up, but you couldn't patch these things up with Justice McReynolds. Justice Clarke used to explain to us that the delights of the judicial life were in inverse proportion to the prestige. The really delightful place to be was on the District Court, because there you were the lord of all you surveyed, whereas on the Supreme Court you were

mixed up with colleagues who were most difficult indeed!

Eventually he threw in the towel, resigned from the Court and went back to Ohio to bring the United States into the League of Nations.

Justice Brandeis was my superior. It would be hard, I think, for clerks nowadays to visualize the environment, the office of Mr. Justice Brandeis. It consisted of two rooms in Stoneleigh Court, and three people: the Justice, myself, and the colored messenger whose name was Poindexter. That is all there was; no stenographer, no typewriter, no filing clerks, no anything, just the three of us.

The Justice answered all of his own mail, and he answered it all in longhand. He and I dealt with the business of the Court. There were no memoranda sent to me. There was just talk back and forth.

The Justice's standards of performance were that in the normal operation of his office we attain perfection. In times of crisis we surmounted perfection. But anything less than normal was regarded as really rather poor.

He used to point out all the time that Poindexter always reached perfection. That seemed to me somewhat to reflect on me, but I wasn't quite sure.

Many of course who are here knew Justice Brandeis, and you have all seen pictures of him. He was a person of Lincolnian grandeur, indeed, with his rugged features, he looked very much like Lincoln. He had eyes which were set under tremendous, bushy eyebrows. He used to thrust them out in moments when he was being tremendously impressive, and it frightened you to death, because his eyes seemed to disappear under those great eyebrows. And it was very terrifying indeed.

He had hair like Lincoln's, completely disordered hair. Mrs. Brandeis did not like him to have his hair cut. He dealt with that as he did with all domestic problems, by never meeting it head-on. He and I went to a barber (to whom I still go) a very distinguished man, and the Justice would go in two or three times a week and would say, "Charlie, the invisible haircut." His

hair never grew, it was never cut, and there was no argument about it.

The Justice's standards of work I met early in our relationship. There is a case which you can find—though nobody wants to find it any more—in the 251st volume of the United States Reports. It is entitled Ruppert v. Caffey.

Now, Jacob Ruppert was the corporate name of Colonel Jacob Ruppert who perhaps is known to you as the owner of the Yankees, but this case had nothing to do with the Yankees or with baseball. It had to do with one question which was of more concern to the American people in 1919 than baseball, and that was Prohibition.

The respondent, Caffey, was Judge Caffey, then the United States Attorney for the Southern District of New York. Judge Caffey was enforcing or attempting to enforce the mandate of Congress that Colonel Ruppert's Brewery should produce beer which contained only one-half of one per cent of alcohol by volume.

This was strongly resisted by Colonel Ruppert, and it went to the Supreme Court of the United States. The opinion fell to Justice Brandeis in the 5 to 4 Court. He wrote the opinion; I wrote the footnotes.

My footnotes up to that time were the Mount Everest of footnotes. Today, Justices of the Supreme Court write textbooks as marginal annotations of their opinions, but up to that time I had written the greatest footnotes, fifteen pages of footnotes.

And what were we trying to do? We were collecting all the legislation and all the decisions of the forty-eight states and the Territories of the United States as to what was an intoxicating beverage. The purpose of this, of course, was to show that when the Congress said, "one half of one per cent of alcohol by volume is intoxicating," that that was reasonable, because all the states had said everything in the world beside that. And compared to the confusion of the states, this was Reason Incarnate. So I went to work on the opinion.

The day came for the opinion to be announced. I went up to

the Court. Here I was going to be admitted to the Order of the Footnote Writer.

The Chief Justice looked out over the court. He nodded to Justice Brandeis. Justice Brandeis shook his head. Terror entered my soul. Something had gone wrong. I said "something"? Somebody. It wasn't likely that it was the Justice; it wasn't likely that it was Poindexter, so I left the Court as quickly as possible, went back to Stoneleigh Court, sat in paralyzed silence.

Pretty soon the door opened and there were entering steps, the squeaking of the chair, the buzzing of my bell.

I went in. The Justice was sitting at his desk. He said, "Dean, did you read all the cases cited in your footnotes?"

I said, "Yes, sir," which was absolutely true. I had.

He said, "Suppose you read these two again," and he handed me two volumes of state reports. I took them out and read them, and the cases had nothing whatever to do with the points for which they were cited. Nothing!

Now, you all know how this happened. You go to the Digests, and this is an obstacle race. The writer of the Digest makes it as hard as he possibly can to find anything. You finally discover what you think is the key phrase, and out come a flood of citations. You look at those. They have very little to do with it, but three or four or five or six cases stand out on the paper like good deeds in a naughty world. You cross out all the others, and here are the ones that are left.

Well, I had crossed out some good cases and left two bad ones.

I went in like a brave man, ready to face the firing squad. I said, "Mr. Justice, I'm sorry. These citations are in error."

He looked at me, thrust those eyebrows out, and finally he said, "Dean, your function is to correct my errors and not introduce errors of your own."

That was the standard under which I was brought up.

For twenty years I had the great joy of knowing this mind which was austere and yet worldly, which was severe and yet loving, which was detached and yet wholly committed. I don't think a word ever passed of an intimate nature between the Justice and

me, and yet I am sure that he never had the faintest doubt of my devotion to him, and I never had the faintest doubt of his friendship for me.

Now, here are the men who thirty-seven years ago were Justices of the Supreme Court of the United States. This is the impression which they made on a young man. As I look back on them I look at them with great respect, and with not only that, but with respectful affection. And this isn't because these days that I am talking about were days of easy relations on the Court. The two years after World War I were years of really passionate division on the Court in which usually three Justices dissented from a majority on questions which aroused the deepest feeling: labor relations and civil rights.

I was a strong partisan and I still am, and I still believe that the three dissenters were right and the majority of the Court were wrong. But it never entered my mind to believe that the majority were not disinterested; it never entered my mind to believe that they were not subjecting themselves as much as men could to the restraint and to the discipline of the law. Though they had a different idea of what the result should be, they believed that controversy could be carried on passionately without impugning the motives of the other side.

I think I learned then—at least I hope that I began to learn then—something which has seemed to me to be profoundly true ever since, and that is that Justice is not one result that you like out of a Court as against another result which you don't like. Justice is a method; Justice is a method by which results are reached. And when that method is followed, as I believe it was followed in the days when I was so intimately connected with the Court, then you have Justice as perfect as man can ever give.

Recent Decisions of the United States Supreme Court

By John D. Calhoun and Edwin M. Zimmerman

LA BUY V. HOWES LEATHER CO.

(January 14, 1957)

This case arose out of an attempt by petitioner, Judge Walter La Buy, a United States District Judge in the Northern District of Illinois, to refer to a master the trial of two antitrust cases.

The parties to the suits had objected to the references, which Judge La Buy had made *sua sponte*, and when he refused to vacate them, mandamus was sought from the Court of Appeals for the Seventh Circuit to compel petitioner to vacate his orders of reference.

The Court of Appeals decided the District Judge had exceeded his power under the pertinent rule (Rule 53(b) of the Federal Rules of Civil Procedure, dealing with references) and issued writs of mandamus. The Supreme Court granted certiorari and in a five to four decision affirmed the Court of Appeals.

Justice Clark wrote for the majority. He saw two problems in the case: first, whether the Court of Appeals had the power to issue the writs of mandamus; second, assuming such power existed, whether the exercise of it was proper in this case.

The first issue he quickly disposed of. The All Writs Act, 28 U.S.C. §1651 (a) provided:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Justice Clark reasoned that since the Court of Appeals could at some stage entertain an appeal in the cases—i.e. would have jurisdiction—it had power in the proper circumstances to issue writs of mandamus concerning them. He cautioned—and it is here that the dissent's path away from the majority is indicated—that: "This is not to say that the conclusion we reach on the facts of this case is intended or can be used to authorize the indiscriminate use of prerogative writs as a means of reviewing interlocutory orders."

Turning to the "real question involved" of whether the exercise of power by the Court of Appeals was proper, Justice Clark examined closely the circumstances in which the references were made and the reasons advanced in support of the references. He noted that Judge La Buy, as a result of preliminary proceedings, was well informed concerning the issues and pleadings and, considering his long experience in the antitrust field, "could dispose of the litigation with greater dispatch and less effort than anyone else." Justice Clark also noted that the scope of the reference of each case included all

issues concerning liability and damages. He characterized the references as amounting "to little less than an abdication of the judicial function depriving the parties of a trial before the court on the basic issues involved in the litigation."

Rule 53(b) provides:

> "(b) *Reference.* A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

Judge La Buy's stated reasons for making the reference were the congested calendar of his court, the complexity of the cases and the extended time that trial would require. Justice Clark did not regard any of these reasons as constituting an "exceptional condition" within the meaning of Rule 53(b). Calendar congestion was to be attacked through improved procedural techniques (such as an assignment commissioner to handle the assignment of cases, the designation of certain judges to handle only motions, pleas, and pretrial proceedings, and separate calendars for civil and criminal trials in cases that have reached issue), but was not to constitute an exceptional circumstance warranting reference. Otherwise, considering the prevalence of congested calendars, references would be the rule rather than the exception. Nor was the alleged complexity of the issues of fact and law ground for reference, but indeed constituted "an impelling reason for trial before a regular experienced trial judge rather than before a temporary substitute appointed on an *ad hoc* basis and ordinarily not experienced in judicial work." Justice Clark also gave short shrift to the argument that the great length of time the trials would require, justified reference to a master.

For these reasons, Justice Clark determined that the orders of references were an abuse of the District Judge's power under Rule 53(b). Citing *Los Angeles Brush Corp.* v. *James*, *272 U.S. 701*, the Court held that the use of mandamus was proper to prevent the virtual nullification of the Rule by the District Judge.

The dissenting opinion was written by Justice Brennan with whom Justices Frankfurter, Burton and Harlan joined. The gist of the dissent was that regardless of the propriety of the reference, the use of mandamus to deal with the interlocutory order was erroneous. Justice Brennan emphasized that mandamus is appropriate where a lower court has exceeded or refused to exercise its jurisdiction, or where appellate review would be defeated if mandamus did not issue. In this case the Court of Appeals had the opportunity in the future, on appeal after final judgment, to consider the question of whether the reference was proper. Permitting mandamus from the interlocutory order of reference thwarted the congressional policy against piecemeal appeals.

Justice Brennan understood Justice Clark to claim in effect that the issuance of the writ was proper here because otherwise the Court of Appeals would not have an opportunity to relieve the litigants of the added expense

and delay of decision which were the alleged consequences of an improper reference. To Justice Brennan, the reasoning of Justice Clark's opinion would establish mandamus as an independent appellate power in the Court of Appeals to review interlocutory orders. Justice Brennan argued that the mandamus power under the All Writs Act properly constituted only an auxiliary power in aid of its jurisdiction. Since, in this instance, the action of the District Court did not frustrate or impede the ultimate exercise by the Court of Appeals of its recognized appellate jurisdiction, there was no occasion for mandamus. This was not, for example, a case of a District Court order transferring a cause out of the circuit for decision. He distinguished the *Los Angeles Brush Corp.* case as dealing with the Supreme Court's power to issue writs, which unlike the power given to the Court of Appeals by the All Writs Act, was not restricted to aiding the jurisdiction of the appellate court.

Justice Brennan also argued that the encouragement to interlocutory appeals which the majority decision offered, would add to calendar congestion.

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The serious split in the Court here is not over the practice of reference to a master. The dissent did not expressly disagree with the majority's conclusion that calendar congestion per se, or complexity of issues, or probable duration of trial, did not individually or in the aggregate warrant a reference in toto of a case to a master under the circumstances presented.

The issue on which the Court split is that of whether the rule against appeal of interlocutory orders was to be departed from where the question concerned the propriety of reference to a master. The dissent's position is that since the issue could be raised on appeal from the final judgment, the interlocutory review should not be allowed. The majority regarded the District Judge's use of Rule 53(b) as essentially a refusal to exercise jurisdiction.

The dissent's concern about the establishment of a new independent review procedure is perhaps overstated. The majority opinion reflects awareness of the danger of establishing an unrestricted exception to the final judgment rule and intends to limit mandamus to exceptional cases such as the one at issue. While the dissent's point that the Court of Appeals could have ultimately reviewed the question after final judgment is accurate, it does seem fitting that this departure from the rigid application of the final judgment rule be permitted, enabling immediate intervention by the Court of Appeals where the issue is whether the District Court is disposing of its judicial functions.

RAYONIER INC. V. UNITED STATES

(January 28, 1957)

ARNHOLD ET AL V. UNITED STATES

(January 28, 1957)

Three new justices and these two cases have brought an end to *Dalehite v. United States*, 346 U.S. 15.

Dalehite was a test case, thrown up by the tragic explosion in 1947, in Texas City, Texas, of a government owned ammonium nitrate base. The Government was charged in *Dalehite, inter alia,* with liability for the negligence of the Coast Guard in fighting fire that followed the nitrate explosion. The case arose under the Federal Tort Claims Act, 28 USC §§1346(b) and 2671–2680. Section 1346(b) of the Act provides that federal district courts, "[s]ubject to the provisions of [the act]," are to have:

> "... exclusive jurisdiction of civil actions on claims against the United States, for money damages, ... for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Resting its decision against the plaintiff on §1346(b), the Supreme Court declared in *Dalehite* that the Act

> "... did not change the normal rule that an alleged failure or carelessness of public firemen does not create private actionable rights.... The Act ... limit[s] United States liability to 'the same manner and to the same extent as a private individual under like circumstances.' ... *There is* [*here*] *no analogous liability;* in fact, if anything is doctrinally sanctified in the law of torts it is the immunity of communities and other public bodies for injuries due to fighting fire." 346 U.S. 15, 43–44. [Emphasis added.]

In the instant cases, claim again was made under the Tort Claims Act. Negligence was charged to the United States Forest Service in failing to guard against or properly to fight forest fires ignited on government land in the State of Washington. The district judge dismissed the complaints, relying on that language in *Dalehite* that is quoted above. The court of appeals affirmed [225 F. 2d 642 and 225 F. 2d 650], also, relying exclusively on *Dalehite.*

The Supreme Court (7–2), in an opinion by Mr. Justice Black (Justices Reed and Clark dissenting), here held that there was error below in deciding that the United States is immune from liability for negligence by its Forest Service in fighting fires.

The decision, as did that in *Dalehite,* looks to Section 1346 (b). But now the Court finds that giving the provisions of that Section "... their plain natural meaning," the United States is liable to petitioners if, as was alleged in the complaints, state law would enforce liability on private persons or corporations under similar circumstances. Rejected is the contention of the Government and of the dissenters that the Tort Claims Act only imposes liability on the United States under circumstances where governmental bodies have traditionally been responsible for the misconduct of their employees. It is, for the moment, unequivocally established that

> "... the test ... [of] the Tort Claims Act for determining the United

> States' liability is whether a private person would be responsible for similar negligence under the laws of the State where the acts occurred."

That private persons do not customarily carry on the negligently performed work is not a controlling desideratum.

Because the courts below both relied on *Dalehite* in denying relief, the judgments of each of those courts were vacated by the Supreme Court, and the case remanded to the district court for consideration in accordance with the Supreme Court opinion.

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Justice Jackson, quoting from a master of the judicial craft, observed in his dissent in *Dalehite:*

> "*Some* theory of liability, some philosophy of the end to be served by tightening or enlarging the circle of rights and remedies, is at the root of any decision in novel situations when analogies are equivocal and precedents are silent." [Cardozo, *The Growth of the Law,* p. 102]. 346 U.S. 15, 49.

Four men decided *Dalehite* (Ch. Justice Vinson, and Justices Reed, Burton and Minton). Two of those men have left the Supreme Court; a third (Justice Reed) will have gone before this note is published. Their passing removes from operation on the high tribunal, for a time at least, the force behind an ethic that has often inclined to wash all official action in an immunity bath of public interest. [See dissent in *Indian Towing Co.* v. *United States,* 350 U.S. 61, 70.] At a time when the Government brushes against each of us in quite as many ways as there are tasks to do, the lavature of the *Dalehite* philosophy will not be missed.

On January 31, 1957, the nineteenth anniversary of his service on the Court, Justice Stanley F. Reed announced his retirement. His departure from the Court, following as it does shortly after the resignation of Mr. Justice Minton, confirms the passing of the so-called Vinson Court (characterized by the frequent agreement of Justices Vinson, Reed, Minton and Burton) in which the legal craftsmanship of Mr. Justice Reed figured so prominently.

In his long and productive tenure, Mr. Justice Reed wrote some two hundred and thirty opinions for the Court. We cannot attempt here to review or evaluate the contribution of such a substantial body of work. It may be observed, however, that one of the outstanding characteristics of his opinions was the degree to which they reflected a profound understanding and sympathy for Government, no doubt based in part at least on his own long experience as a public servant prior to coming on the Court, in its efforts to cope with multifarious economic and social issues. This appreciation of the

Government's point of view often led to decisions which enabled the Government effectively to cope with the pressing issues that it faced. On the other hand, some critics have alleged that the same appreciation also resulted in decisions which, as in the case of the rights of alleged criminals or of aliens, perhaps overlooked the nature of the advantage which a State will always have over the individual.

For the past half dozen years or so, former clerks of Mr. Justice Reed have participated in preparing these reviews of the work of the Supreme Court. It would not be amiss, therefore, if on the occasion of his retirement they acknowledge here his great graciousness, integrity and wisdom, which made the period of association with him so permanently enriching for them.

Recent Decisions of the New York Court of Appeals

By Sheldon Oliensis and Joseph H. Flom

BECKER V. CITY OF NEW YORK

(2 N.Y. 2d 226, January 10, 1957)

In a unanimous opinion, the Court of Appeals has held that the long-standing rule limiting the tort liability of hospitals is inapplicable to State hospitals and has strongly hinted that the limitation as to private hospitals may be overturned in the future.

Plaintiff brought this action for personal injuries allegedly resulting from the negligent administration of an intravenous injection by a nurse in a non-profit City hospital. At the close of plaintiff's case, Trial Term of the Supreme Court dismissed the complaint. This disposition was affirmed by the Appellate Division, First Department, by a divided court. The Court of Appeals, through Judge Froessel, reversed the judgments below and ordered a new trial.

After reviewing the evidence, the Court of Appeals concluded that the evidence would not support a finding of administrative negligence on the part of the City. Under prior Court of Appeals decisions, the failure to prove administrative negligence would seem to have required dismissal of the complaint. However, the Court ruled that, if the jury should find that the injury has resulted from the negligent performance of *medical* duties by a City employee, the plaintiff would be entitled to recover. A new trial was therefore ordered for the determination of this issue.

This conclusion works a substantial change in the pre-existing law. In *Schloendorff* v. *Society of New York Hospital,* 211 N.Y. 125, 105 N.E. 92 (1914), the Court had ruled that a hospital was immune from liability when a patient was injured as a result of a medical act performed by an employee of the hospital in the course of treating the patient. The rule has been applied equally both to profit-making and charitable institutions.

The rationale of the rule is that the hospital employee, when performing a medical act, is acting not as the hospital's servant, but as an independent contractor. Under generally applicable rules of law, the hospital employee would not be considered an independent contractor, as the Court noted.

The rationale of the rule, the Court pointed out, was questioned by it in a recent decision, *Berg* v. *New York Society,* 1 N.Y. 2d 499, 136 N.E. 2d 523 (1956). In that case the *Schloendorff* rule was held inapplicable because the "medical act" had been performed by a technician, rather than by a doctor or nurse. Therefore, the Court found in the *Berg* case that it was unnecessary to determine whether the *Schloendorff* rule had "outlived its usefulness."

In this case, the Court based its opinion on Section 8 of the Court of Claims Act, in which the State waived its sovereign immunity. As prior decisions had stated, the Court of Claims Act was a recognition of "a moral duty demanded by the principles of equity and justice." Under Section 8, all persons who were in fact employees of the State should therefore be treated as such for the purposes of application of the doctrine of *respondeat superior*, as for other purposes. So far as the State and its subdivisions were concerned, the *Schloendorff* rule was held inapplicable.

This case wipes out, in part, an illogical and unjust distinction between "administrative" and "medical" acts—a distinction which has fallen into increasing disfavor with the courts in recent years.

While this decision is rested on the Court of Claims Act, the opinion evidences something less than enthusiasm for the *Schloendorff* decision generally. While *Schloendorff* is not expressly overruled, the Court's reference in its opinion to the "so-called *Schloendorff* rule" and its attack on the rationale underlying the rule raise considerable doubt that *Schloendorff* can withstand an appeal which squarely presents that rule for approval or disapproval.

This probability is heightened by the result in this case. As the Court recognized, there is little logic in holding State hospitals liable for the medical acts of their employees, while non-governmental hospitals are exempt from liability arising from the same acts.

Committee Report

COMMITTEE ON PROFESSIONAL ETHICS

OPINION NO. 821

Question: For many years A, an attorney in New York City, has specialized in the handling of real estate condemnation proceedings. It has been his custom for some years to note from various sources of information proposed condemnation proceedings, to determine from the Registrar's Office the names of the owners of the properties concerned and the names of their lawyers and to write letters to the lawyers, not to the property owners, advising them of the pendency of such proceedings. The letter is in substantially the following form:

[Law Office Letterhead]

Re: X Y Z Building
John Doe [the owner's name]
12345 West 1000th Street
Block 12345—Lot 12345

[Date]

Richard R. Roe
9876 West 42nd Street
New York, New York

Dear Mr. Roe:

Please be advised that there is proposed to be built a housing project by the ———————— using Federal and State subsidies in which is located the above property of your client.

In an announcement made in the newspapers on June 2nd, 19—, it was disclosed that the project would be built under Title I of the National Housing Act of 1949, as amended. While the project is only tentative, studies will now be made looking to the acquisition by condemnation proceedings of the properties needed.

I should be pleased to have the opportunity of discussing this matter with you further at your convenience.

Very truly yours,

Is the mailing of such a letter proper? A emphasizes that such letters go only to lawyers and never to laymen; that they provide valuable information to the lawyers about such proceedings substantially in advance of the time when the lawyers would otherwise learn of them and are therefore the "convenient and beneficial information to lawyers" approved by Canon 46; that many of the lawyers who receive such letters have previously retained

A or are acquainted with him and some of them have, indeed, requested that they be notified of proposed proceedings involving properties of their clients; and that such letters do not expressly solicit business.

A urges that Canons 27 and 46 must be construed as permitting such letters to be sent to other lawyers by a lawyer "engaged in rendering a specialized legal service directly and only to other lawyers"; that such construction involves no element of evil to layman or lawyer, but, on the contrary, is calculated to promote the best interests of both layman and lawyer.

Opinion: In the opinion of the Committee the lawyer's behavior is not sanctioned by the Canons.

The Canons apply to all branches of the profession; specialists are not exempt (Canon 45).

The prohibition against solicitation contained in Canon 27 is subject to limited exceptions only. The publication "in reputable law lists" of certain specified information, including "branches of the profession practiced," is permitted (Canon 27). Also permitted is the insertion by a lawyer "engaged in rendering a specialized legal service directly and only to other lawyers" of "a brief, dignified notice of that fact" in "legal periodicals and like publications when it will afford convenient and beneficial information to lawyers desiring to obtain such service" (Canon 46).

These exceptions sanction no more than notice of availability to provide specialized legal services, given in the limited way specified. (See Opinion 283 of this Committee, *Opinions on Professional Ethics,* 1956, page 150.) This Committee, jointly with the Committee on Professional Ethics of the New York County Lawyers' Association, has expanded the exceptions by approving (in certain circumstances) the mailing to other lawyers, both known and unknown, of announcements stating the particular branch of law to be practiced. (Opinion 375, *ibid.,* page 762.)

Neither these exceptions nor any opinion of this Committee sanctions notice, given by letter to lawyers with many of whom A has had no acquaintance or relationship, of availability in connection with particular matters of named clients of the lawyers addressed. Professional and dignified though the letters may be, and convenient and beneficial to the lawyers addressed, they are in intent and reasonable inference the direct solicitation of business, and are proscribed by the Canons. The close "personal relations" necessary to permit solicitation by personal communications are lacking here (Canon 27; see Opinion 467, *ibid.,* page 253.)

The Committee recognizes that, in the light of the increasing specialization in the legal profession, Canon 46 has been criticized. A recent amendment to Canon 46 by the American Bar Association permits lawyers to announce to other lawyers, by mail or published notice, their availability in special branches. Neither the Canons of the New York State Bar Association nor the Canons of this Association have been so amended. In any event, the lawyer's behavior in this case is not permitted even by the Canon as amended by the American Bar Association.

Unless and until it is recognized by amendment to the Canons, that the convenience and usefulness to other lawyers of behavior such as A's justify a change in the Canon and that such change does not offend the traditions or lower the tone and dignity of the profession, this Committee must disapprove the behavior except in those cases in which A has been requested to notify the other lawyer of the proposed proceedings.

February 4, 1957

OPINION NO. 822

Question: May an attorney, who specializes in the collection of judgments, send the following letter to other members of the profession:

"Dear Sir:

It may be that there are a number of judgments reposing in your files in connection with which you have collected no moneys.

My office is equipped especially for the collection of judgments.

May I suggest that you avail yourself of the facilities of my office?

Sincerely yours,"

Opinion: Canons 27 and 46 are involved. Canon 27 states that it is unprofessional to solicit professional employment by circulars, advertisements or personal communications not warranted by personal relations. Canon 46 permits an attorney engaged in rendering specialized legal services to insert in legal periodicals and like publications a brief, dignified notice of that fact, when it will afford convenient and beneficial information to lawyers desiring to obtain such services.

In the opinion of the Committee, the circulation of the letter in question is contrary to Canon 27. It is not within the ambit of the customary simple professional card and it is not protected by Canon 46, for the exemption allowed in that Canon is applicable only to a dignified notice of the fact of specialization, inserted in legal periodicals and like publications. In addition, this letter goes beyond the proper purpose of furnishing information to the profession and savours of advertising and solicitation.

February 4, 1957

OPINION NO. 823

Question: X is an owner and driver of a car in which Y is a passenger. The car strikes a lamppost and Y is injured. Attorney A represents X in court on a criminal charge of driving his automobile while intoxicated. This charge is dismissed for lack of evidence. A now asks the Committee if he may accept

employment offered him by Y in a personal injury action against X, who has insurance to cover injuries in cases of this kind. A states that X will consent in writing to his representing Y in the action against X.

Opinion: The Committee is of the opinion that under the facts presented it would be improper for A to represent Y in an action against X as he would, in effect, represent at different times both parties involved in the same occurrence. Although it is true that Canon 6 contains an exception in the event that express consent is given by all parties concerned after full disclosure of the facts, the Committee has never construed this exception as absolute. Further, if A were to represent Y, a suspicion of collusion between the private parties to the civil action against the insurer might arise (see Opinion 603, February 18, 1942).

February 4, 1957

The Library

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THE PASSPORT AND THE RIGHT TO TRAVEL

The relation of the citizen to the state being reciprocal, embracing the duties of the individual, no less than his rights, the essential thing to be determined is the good faith with which the obligations of citizenship are fulfilled.

JOHN BASSETT MOORE

American visa policy: a report; problems facing the foreign scientist who applies for visitor's permit. 1955. 11 Bul. Atomic Scientists. 367–371.

Barnett, James D. Passport administration and the courts. 32 Oregon L. Rev. 1953. 193.

Barry, J. V. Treason passports and the ideal of fair trial. 1956. 7 Res. Judicatae. 276.

Borchard, Edwin M. Diplomatic protection of citizens abroad. New York, Banks Law Pub. Co., 1915. 988p.

Boudin v. Dulles. Constitutional law, procedural due process and passports. 1956. 44 Cal. L. Rev. 579; 8 Stan. L. Rev. 673; 2 Wayne L. Rev. 149.

Boudin, Leonard B. The Constitutional rights to travel. 1956. 56 Col. L. Rev. 47.

Chafee, Zechariah. Three human rights in the Constitution of 1787. Lawrence, Univ. of Kansas Press, 1956. 245p.

Chew, Geoffrey. Passport problems, procedures in the issuance and refusal of passports by the United States department of state. 1955. 12 Bul. Atomic Scientists. 26–28.

The committee has taken testimony from Dr. Linus C. Pauling and Judge William L. Clark, whose passports had been limited and withdrawn. Nov. 16, 1955. N. Y. Times. Col. 2. 22.

The Constitution Abroad. The Operation of the Constitution Beyond the Continental Limits of the United States. 1953. 32 Texas L. Rev. 58.

Coulter, Eliot, B. Visa work of the Department of State and the Foreign Service. Washington, Office of Public Affairs, 1949. 18p.

Denial of a passport must conform to standards of due process. 1956. 40 Minn. Law R. 709–711.

Diplock, Kenneth. Passports and protection in international law. 1947. 32 Grotius Society. 42–59.

Documents meeting the passport requirements of the Immigration and nationality Act. 1955. 32 Interpreter Releases. 331–339.

Dupius, Charles. Souverainté et législation. 1930. 2 Académie de Droit International. Recueil des Cours. 141–165.

Fanelli, Joseph A. Passports right or privilege. 1955. Annals Am. Acad. 36–40.

Fosdick, Raymond. The Passport and the Right to Travel. July 17, 1955. N. Y. Times Magazine. 8.

Gargas, Zygmunt. Das internationale Passproblem. Haag, Gebr. Belinfante, 1927. 81p.

General information regarding visas for immigrants. 1953. 30 Interpreter Releases. 163–166.

Gilbert, Horace N. Visa regulations and the international exchange of students. 1955. 11 Bul. Atomic Scientists. 371–373.

Hackworth, Green H. Digest of International Law. Vol. 3. Washington, Govt. Print. Off., 1942.

Hanna. Passports, For Revenue Only. Atlantic Monthly. Feb. 1929. 264–268.

Intergovernmental Committee on Refugees. Documents préparatoires relatifs à l'adoption d'un titre d'identité et de voyage pour des réfugiés relevant de la compétence du Comité intergovernmental. Londres, 1946. 157p.

International Chamber of Commerce. United States Council. Committee on Trade Barriers. "Red tape" in trade and travel; a report. New York, United States Council of the International Chamber of Commerce. 1952. 11p.

Jaffe, Louis L. The Right to travel: the passport problem. 35 Foreign Affairs. 17. 1956.

Krock, Arthur. In the Nation. June 3, 1955. N. Y. Times. Col. 5. 22. June 14, Col. 5. 28.

Lowe's manual of visa regulations. New York, Lowe Services. 1v. 1956.

Moore, John B. A digest of international law. Washington Govt. Print. Off., 1906. 8v.

Morgan, J. W. The visa system as an instrument of immigration control. 1950. 27. Interpreter Releases. 280–290.

New diplomatic visa regulations issued by United States department of state. 1951. 28 Interpreter Releases. 295–302.

Organization of United States visa office. 1955. 32 Interpreter Releases. 352–354.

Pan American Union. Dept. of econ. and soc. affairs. Travel div. Requirements for the entry of United States tourists into the Latin American republics. 1951. 19p.

Parker, Reginald. The Right to go abroad: to have and to hold a passport. 1954. 40 Va. L. Rev. 853.

Parsons, W. S. J. Rights of the State Dept. over issuing passports. July 1955. 93 America.

Passport appeals procedure. 1956. 33 Interpreter Releases. 127–130.

Passport Conference. 1st, Paris, 1920. Passports of members of the Secretariat and agents of the League of Nations. Genéve, 1920.

Passport Conference. Organization for communications and transit. Geneva, Imp. Kunding, 1926. 12p.
Passport denied: State Department practice and due process; note. 1951. 3 Stanford L. Rev. 312.
The Passport puzzle. Comment. 23 U. Chi. L. Rev. 1956.
Passport procedures and denials. 1952. 29 Interpreter Releases. 207–209.
Passport refusals for political reasons: constitutional issues and judicial review: comment. 1952. 61 Yale L. J. 171.
Passports. 1929. 73 Sol. J. 115.
Passports and freedom of travel: the conflict of right and a privilege: note. 1952. 41 Georgetown L. J. 63.
Reale, Egidio. Le Régime des passports et la Société des Nations. 2d ed. Paris, A Rousseau, 1930. 366p.
Rosenfield, Harry N. Consular non-reviewability: a case study in administrative absolutism; United States consular officers have absolute discretion to deny a visa to an alien. 1955. 41 Am. Bar Assn. J. 1109–1112.
Shactman v. Dulles. Constitutional law, due process of law, discretion of the Secretary of State to issue passports. 1956. 40 Minn. L. Rev. 709; 31 N.Y.U.L. Rev. 603; 34 Texas L. Rev. 765; 23 U. Chi. L. Rev. 260.
Sibley, N. W. The Passport System. 1906. 7 J. Comp. Leg. & Int'l L. 26–33.
United Nations. Econ. and social council. Transport and communications commission, seventh session; Passports and frontier formalities developments in 1953–1954: note by the secretary-general. New York, 1954. 7p.
United Nations Educational, Scientific and Cultural Organization. Travel abroad. Paris, 1952. 1v.
United Nations. Secretary-General, Passports and frontier formalities, progress in the post-war period; note. Lake Success, 1951. 100p.

United States Congress. House. Committee on Foreign Affairs

Authorizing the president in certain cases to modify visa fees. Report. Washington, U.S. Govt. Print. Off., 1925. 2p.
Extension of passport control. Hearings. Washington, Govt. Print. Off., 1919. 55p.
Further regulating the granting of visés by diplomatic and consular officers. Hearings. Washington, Govt. Print. Off., 1921. 52p.
Passport renewals. Hearings. Washington, U.S. Govt. Print. Off., 1930. 89p.
Regulation of entry into United States through visa control. Report. Washington, U.S. Govt. Print. Off., 1921. 10p.
To regulate the issue and validity of passports and for other purposes. Report. Washington, U.S. Govt. Print. Off., 1926. 2p.
U.S. Congress. House. Committee on Immigration and Naturalization. Review of refusals of visas by consular officers. Hearings. Washington, U.S. Govt. Print. Off., 1933. 42p.
U.S. Congress. House. Committee on the Judiciary. United States passport; denial and review. Washington, U.S. Govt. Print. Off., 1956. 32p.

U.S. Congress. House. Committee on Un-American Activities. Investigation of the unauthorized use of United States passports. Hearing. Washington, U.S. Govt. Print. Off., 1956. 4303–4191p.
U.S. Congress. Senate. Committee on Foreign Relations. Passports to American citizens in time of war. Report. Washington, U.S. Govt. Print. Off., 1935. 1p.
U.S. Congress. Senate. Committee on Government Operations. Progress on reorganization of the Passport Office, Department of State. Report. Washington, U.S. Govt. Print. Off., 1957. 18p.
U.S. Congress. Senate. Committee on Immigration. Review of visa refusals. Washington, U.S. Govt. Print. Off., 1932. 2p.
U.S. Congress. Senate. Committee on the Judiciary. Establishing a Bureau of Passports and Visas. Washington, U.S. Govt. Print. Off., 1950. 5p.
U.S. Senate. Com. on the Judiciary. Subcommittee to investigate juvenile delinquency. Requiring exit permits for juveniles. Washington, U.S. Govt. Print. Off., 1955. 71p.
U.S. Dept. of State. Passport and visa information for clerks of courts who take passport applications. Washington, U.S. Govt. Print. Off., 1950. 23p.
Validity of passports. Hearings. Washington, Govt. Print. Off., 1926. 33p.

United States Passport Office

Abstract of passport laws and precedents. Washington, 1956. 1v.
The reorganization of the Passport Office. Washington, 1955. 15p.
Statistics of passports issued or renewed, January through June 1956. 13p.
Varlez, Louis. Les Migrations Internationales et leur Réglementation. 1927. 5. Académie de Droit International, Recueil des Cours. 169–348p.
Vestal, Allan D. Freedom of movement. 41 Iowa L. Rev. 6. 1955.
Vouching for Passports. 1929. 73 Sol. J. 824.
Weisskopf, V. F. Visas for foreign scientists; report. 1954. 10 Bul. Atomic Sci. 68–69.
When you go abroad: information for bearers of passports. 1956. 105p.
Who are entitled to a British Passport. 1927. 71 Sol. J. 685.
Wyzanski, Charles E. Jr. Freedom to Travel. Atlantic Monthly. Oct. 1952. 66.
You and your passport. Presents information relating to application requirements, vaccinations, care of your passport, visas, and getting along abroad. 1956. 10p.

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